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October 12, 2006

Alva DeJarnett-Miller
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: MUR 5664 -
Supplemental Information

Dear Ms. DeJarnett-Miller:

I am in receipt of a September 27, 2006 letter from Chairman Michael E. Toner in the above-referenced matter. Although the letter is dated September 27, 2006, I did not receive the same until October 2, 2006. Pursuant to that letter, I am hereby submitting additional materials that are relevant to the Commission's consideration of this matter.

In my last correspondence to you dated December 9, 2005 I submitted additional materials based on Mr. McMillian's additional information dated November 16, 2005. As pointed out in footnote 2 of the Factual and Legal Analysis concerning International Union Painters and Allied Trades District Council 53, in my December 15, 2005 response I submitted additional affidavits that were executed in early August of 2005. Please note that the reason those affidavits were not submitted to the Commission until December 15, 2005 is that the deadline, through a granted extension, for District Council 53 to submit any materials to the FEC was July 21, 2005. Only after Mr. McMillian submitted his subsequent information in November of 2005 did District Council 53 believe it had an opportunity to submit the additional affidavits.

In any event, the Commission should know that the National Labor Relations Board thoroughly investigated the facts and circumstances regarding this matter towards the end of 2005. The Commission may want to contact Board Agent Leroy G. Miller who investigated Mr. McMillian's last NLRB Complaint. I have enclosed a letter from the National Labor Relations Board indicating that Mr. McMillian withdrew his last complaint and I previously informed the Commission that Mr. McMillian had withdrawn all prior NLRB Complaints. I have also enclosed a prior letter from the National Labor Relations Board indicating that Mr. McMillian withdrew a

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**Alva DeJarnett-Miller
Federal Election Commission
Office of General Counsel
October 12, 2006
Page Two**

prior NLRB Complaint as well as the affidavits taken in Charleston, West Virginia by Board Agent Leroy Miller in December of 2005.

Further, although I previously provided you the disposition of one (1) of the related unemployment proceedings by Mr. McMillian (Case No. R-2005-2265), I have not yet provided you the transcripts of the unemployment hearings with sworn testimony by Mr. McMillian, Clarence Mitchell and the other witnesses. This sworn testimony also involved the same facts and circumstances surrounding the present matter and may be helpful for the Commission's review. Also, in reviewing my file, I realize I did not provide you the disposition case No. R-2005-2264 and I have enclosed a copy of the same.

If you have any questions or request any further materials for review in this matter, please do not hesitate to contact me.

Very truly yours,

THE SEGAL LAW FIRM


John F. Dascoli

JFD:kdk

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Enclosures

cc: Richard Hackney



United States Government

NATIONAL LABOR RELATIONS BOARD

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3003 John Weld Peck Federal Building

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December 19, 2005

Mr. Gerald McMillian

Proctorville, OH 45669

Re: INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT DC-53
Case 9-CA-42397

Dear Mr. McMillian:

This will acknowledge your request to withdraw the charge filed in the above-entitled matter. I have approved such withdrawal and the case is closed on our records.

Very truly yours,

Gary W. Muffley
Regional Director

GWM/LGM/md

cc: Mr. Clarence Mitchell
International Union of Painters and
Allied Trades, District DC-53
115 Spring Street
Charleston, WV 25302

Mr. John F. Dascoli
Attorney at Law
The Segal Law Firm, A Legal Corporation
810 Kanawha Boulevard, East
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United States Government

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June 21, 2005

Mr. Gerald L. McMillan

Proctorville, OH 45669

Re: INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADES
Case 9-CA-42086

Dear Mr. McMillan:

This will acknowledge your request to withdraw the charge filed in the above-entitled matter. I have approved such withdrawal and the case is closed on our records.

Very truly yours,

Gary W. Muffley
Regional Director

GWM/MGM/md

cc: International Union of Painters
and Allied Trades
Attn: Mr. Clarence Mitchell
Secretary/Treasurer
115 Spring Street
Charleston, WV 25302

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County of Kanawha

State of West Virginia

AFFIDAVIT

I Kenneth D. Bird, being first duly sworn upon my oath state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this affidavit will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce the affidavit in connection with a formal proceeding.

I reside at [REDACTED] Sod, West Virginia 25564. My telephone number is [REDACTED]

I am employed by International Union of Painters and Allied Trades, District Council 53, located at Charleston, West Virginia.

I am employed by District Council 53 as a Business Representative and an Organizer. I report to Clarence Mitchell, Business Manager/Secretary-Treasurer or Rick Hackney, Assistant to Mitchell. I am the servicing agent for Local Union 970 of the Painters Union, located in Charleston. I am Financial Secretary for Local 970.

In the past I filed weekly activity reports with Mitchell. The reports had the purpose of telling what I did during the work week. I think the weekly reports were discontinued in July 2005. Prior to July 2005, I primarily worked in the DC-53 office handling accounting and financial matters and I still did some servicing work. A full time accounting and financial person, Tracy Funsstock, was hired around June or July 2005, and I began to return to full time servicing work. As a result, I was not doing the same amount of servicing work as other business representatives prior to July 2005. I was not required to submit weekly reports on a consistent basis. I worked in the same building with Mitchell and he knew what I was doing on a regular basis.

I was aware that other business reps filed weekly reports and if they were faxed into the office, I would look over them sometimes. I do not recall any political activity being mentioned in the reports I saw.

I did attend the monthly staff meetings when all of the reps came to the office and a meeting as conducted. During those meetings, Mitchell did not state that reps were required to or had to participate in campaign or political activities in their areas during

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the 2004 presidential and local political campaigns. Mitchell told reps that if there was a way reps could attend or participate in political activities, we could do so it has to be approved first by him, Hackney or Dan Poling, business rep for Parkersburg local 1144. Poling is one of the vice presidents on AFL-CIO and probably gets first-hand information regarding political matters. Whatever we do has to be approved by Mitchell or Hackney no matter what it involves. I'm not sure of the exact wording, but Mitchell expressed that if we had work to do he did not want us neglecting our work to participate in political activities during working time. I do not recall specifically what Mitchell said regarding his expectation or requirement that reps engage in political activities. I do not recall what Mitchell said about reps being involved in political or campaign activities.

I did participate in some campaign activities. I wore our black and gold tee shirts and attended political rallies. I participated in phone banks, registered people to vote and engaged in precinct walks going to houses and passing out political flyers. These activities were done during evenings and on Saturdays. I was not paid for my time on those occasions. It was not mandatory and Mitchell did not tell me to participate in these activities on my own time. I recognize that it is important for labor to help elect candidates who support us. The attendance at rallies was done during working time and I was on the clock and was paid by the Union. I was not required to take personal or vacation time on those occasions. However, I worked evenings and weekends to make up for the time I spent at the rallies during working time. I recall participating in 2 rallies and one of them took all day. The other rally lasted from day to evening. I did not receive any over time or after hours pay for participating in the rally which extended past working time. Poling sent information to the unions about what and where these activities were taking place in the areas of the various locals. I do not know how the unions were told to participate in these activities. I suppose that Mitchell made the local union in the area where an activity was going to take place aware of that activity and encouraged them to get as many people as possible to participate. I do know that union tee shirts were sent to areas where there was to be a campaign or political activity.

I do know that political activity reports were filed with Poling. I completed my report and gave it to Jerry Haffman, rep for local 970. He combined it with other reports from our local and passed it along to Poling. I assume that the purpose of the political activity reports was to see how many people we had up and running and registered to vote so that the West Virginia AFL-CIO would have a record of that information. No one told me the purpose of submitting the political reports.

At every staff meeting conducted prior to the presidential election, Poling attended the staff meetings and spoke to the reps. He gave us information about how the campaign was going in various locations of our area. I recall Mitchell telling us not to place anything in our weekly reports about political or campaign activities, but to place that information in our political report that went to Poling. Mitchell did not give an explanation for wanting us to do it that way. I do not recall when Mitchell told us to do that.

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I recall at the April 2005 staff meeting at the union office building, Gerald McMillian stated that he had to falsify his weekly regarding the elections and that we as agent had to stick together and back him up and tell the truth. He said that he was going to turn in Mitchell and Hackney to every government agency for requiring falsifying union documents. Prior to that meeting I had heard about McMillian having a problem with the reports but I did not know what it was all about. McMillian never had any conversation about this problem prior to that meeting. However, it was a constant problem raised by Mitchell at the staff meetings that McMillian did not get to work on time, which was 7:30am. McMillian was not putting down in his weekly report the time he arrived at work.

Sometimes around the third week in November 2005, McMillian called me and told me that people would be coming around to talk to us, that now was the time to take the Mitchells down. He said that he knew that that was what Jerry Huffman and I wanted when we came in back in the 90's. I told him no, that Mitchell was not around and we were wanting to clean up the embezzlement that was going on at that time. I did not agree or support his position but I told him that Mitchell was not around when the union was having its problems. I do not recall if McMillian said anything about the union violating the law regarding not including in the weekly report the political activity engaged in by reps. I did not express any agreement or support of him regarding that matter. McMillian ended the conversation.

I was resent at the meeting when McMillian submitted his letter of resignation. I do not recall what he said but he read the letter.

The District had recently acquired a new area in the eastern panhandle area of West Virginia. We did not previously have that area. We were aware that we were going to begin organizing in that area at some point. That area, Charles Town and Harper's Ferry, West Virginia and adjacent areas in the state of Virginia, is about 5 and a half hours drive from Charleston. It is the fifth fastest growing area in population in the USA. The nearest Painters union to that area had ceased operations several years ago and no Painters union was working that area. That area has now been included in our district which makes our district larger than it has been. It makes going there farther than we have had to travel before. The local union closest to that area is local 804, serviced by Gary Strope. Strope has been a rep about 2 years and is considered new and inexperienced. It is my guess that that is why he was not assigned to that organizing drive. Huffman was appointed the head of organizing in 2002. Gary Kosky, rep in Wheeling was closer to the area by half the time and he is as qualified as McMillian, but I do not know why he was not sent to do the job. Ted Hart is across the river from Wheeling but I do not think he is as qualified as McMillian. Poling is in Parkersburg and closer to the area, but he represents water truckers, who actually operate water pressure equipment to clean walls, and there is always some servicing activity going on with that unit that he needs to be present as much as possible. There were others closer to the area who were qualified to do the organizing but they were not chosen to go. Having to go that far was unusual but it was because we had an unusual situation by having acquired

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an area that far from our normal operating geographical area. Someone was going to have to go there and likely would have had farther to go than normal.

I was aware that there were problems between Hackney, Huffman and McMillian. I did hear Huffman and McMillian threaten to go outside and kick each others ass at one of the April meetings. I think that it was only talk and nothing was going to happen between them. I knew that Hackney and McMillian did not like each other but I had not heard any threats made by either of them to each other. However, I can understand that McMillian might not have wanted to go do an organizing drive with them under the circumstances. Even so, I did not think that it was unfair that McMillian was assigned to that organizing campaign.

I was present at staff meetings when the association negotiations were discussed. Mitchell took time to explain what was going on at each staff meeting. We even had extra meetings to go through the negotiations and made sure it was understood and input was received from reps. He told reps if they did not know or understand something, to let him know and he would go over it. Mitchell, Hackney and Huffman went to the various locals to explain and discuss the negotiations when asked to do so. Prior to the vote on the contract, I do not recall McMillian raising any questions or problems or complaining that he was not getting information about the negotiations to give to his membership. After the contract was voted on, I recall McMillian state that he did not know that his vacation plan worked the way that it did. McMillian complained that he was not kept informed about the negotiations. I do not recall if he stated this during a staff meeting or just standing around talking.

I have read this statement consisting of 4 pages and it is true to the best of my knowledge and belief.

_____

Subscribed and sworn to before me at Charleston, West Virginia

on December 8, 2005



Leroy G. Miller, Board Agent, National Labor Relations Board

County of Kanawha

State of West Virginia

AFFIDAVIT

I Clarence E. Mitchell, Sr being first duly sworn upon my oath state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this affidavit will be considered confidential by the United States Government and will not be disclosed unless it becomes necessary for the government to produce the affidavit in connection with a formal proceeding.

I reside at [REDACTED], Yawkey, West Virginia 25573. My telephone number is [REDACTED].

I am employed by District Council 53, of the International Union of Painters and Allied Trades, AFL-CIO, CLC (IUPAT) located at Charleston, WV.

I am Business Manager, Secretary and Treasurer of the union. I have held this position since April 2002. The union operates in West Virginia, Virginia, Maryland, Kentucky and Ohio. The business representatives of the various local unions report to me or Richard Hackney, Assistant Business Manager and my assistant.

There has been a practice of business reps submitting weekly reports summarizing their activities for the week. These reports were a requirement.

At some time prior to the campaign for president of the United States in 2004, the General President IUPAT sent a letter to this district stating that we could hire a fulltime person to educate our members on the issues and the candidates regarding the national and local elections. Ray Bradley was hired to perform that task. Bradley was president of Local 1144. I appointed Danny Poling Director of Political Action. Poling was a business representative of Local 1144 who worked for District Council 53 (DC-53).

Starting from the beginning of the DC-53, I have told reps that if they are going to be involved in political campaigns, they have to do it on their own time. I never instructed or made it mandatory that reps had to be involved in political activity or campaigns. I never told reps that they had to attend political meetings, rallies, voter registration, or any such activities.

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Between March 2004 and the election that year, there were discussions at staff meetings regarding the elections. Staff was repeatedly told that they had to engage in those activities on their own time. It is my understanding that it is against the law, federal and local, to engage in political activities on union time. It is for that reason that staff was told to engage in political activities on their own time.

I reviewed the weekly reports submitted by all of the staff each week. I do not recall if anyone other than McMillian submitted reports that had political activities included in the report. I did not tell staff not to include political activities in their weekly reports and if they engaged in political activities to describe it as, "educating members".

I never told staff to submit Political Activity Reports. There were discussions about political activities at staff meetings but I do not recall any discussion about staff submitting political activity reports. They were not submitted to me. I do not know what the reports contained. To my knowledge, political activity reports were not required for the purpose of finding out which staff was engaged in political activities and how much they were doing.

I do not recall the date, but McMillian called me on the phone and told me about a union having election problems. I do not recall which union it was or what the problems were. McMillian did not tell me that based on that information he felt that the Painters union had broken the law. I did not tell McMillian that there was no fucking way that we had broken the law and he did not know what he was talking about. I did not tell McMillian that he had better watch what the fuck he said and what the fuck he was doing.

I recall receiving a fax from McMillian requesting to meet with General Vice President Candeloni but I had no idea what he was talking about. I do not recall what response, if any, I made regarding McMillian's fax. He had made numerous calls to the officials in the eastern region and I have told him and the rest of the staff that they may do that if they wish.

Around October 4, 2004, I caused to be implemented Staff and Office Policies, which, among other things, set the office hours from 7:30 am to 4:30 pm, which has always been the understanding within the district. One of the primary reasons I implemented the policy was because McMillian would not go to work on time but the policy applied to everyone. Policies regarding other matters were included.

I was not told that during a union meeting in Kenova, West Virginia on March 10, 2005 at local 813 that McMillian told the membership that he thought that the reps of DC-53 had broken federal election laws and he was going to report that to the Federal Election Commission (FEC).

I do not specifically recall a date, but I could have called McMillian at his office and if he did not answer his phone, the next time I talked to him I asked him where he was when I called. I was not calling to check up on him but for some business related

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reason or just to maintain contact with my staff. It was not done to retaliate against him because of his issue regarding the FEC.

I have viewed a photograph marked as CP#1. It is a photograph of me and other business representatives at a rally for John Kerry at the Beckley, West Virginia airport. I acknowledge that we were there during a workday during working time. I do not recall the date of this rally. It is my understanding and according to the policies, everyone should have made up for the time they spent at the rally. Huffman and Bird had work in that area and could have stopped to check on some jobs. I do not know for a fact if they did so. The event lasted only an hour. I was back at my office in Charleston working that afternoon after the rally.

Hackney handled negotiations regarding the association agreement. He maintained contact with the staff on those matters. Hackney reported to me regarding the progress of those negotiations. McMillian never complained to me nor did Hackney ever tell me that McMillian complained that he was not getting communications regarding those negotiations. Hackney and Jerry Huffman, Director of Organizing, were involved in the negotiations and went to the various locals and explained the negotiations to them. Hackney and Huffman told me that McMillian told them that he did not need anyone coming to his local to explain the negotiations, that he would take care of it himself.

I do not recall the date but at a staff meeting, I heard McMillian and Huffman exchange words about a disagreement. I did not hear anything mentioned about the FEC. I did not hear either of them say anything about kicking each other's ass. Hackney was not involved in that disagreement.

I recall receiving a fax from McMillian stating that he wanted an appointment with the union's legal representative regarding the union having broken FEC laws. I sent this and other faxes from McMillian to the president and Candelori.

I did attend a meeting with McMillian and other trustees of the Health and Welfare Fund on April 26, 2005, not April 27. McMillian was a trustee at that time. The trustees had decided to merge into one fund. C.E. Adkins, a contractor, Kenneth Bird, and others were present. There were consultants for the Administrative Service Group Incorporated (ASGI) which was a consultant organization. McMillian had previously agreed to merge the funds, but he then wanted to remove his local from the merger, but was out voted by the trustees. He became angry and left the meeting before it was over. I did not give McMillian a note removing him as a trustee at the conclusion of that meeting. He left the meeting before it was over. I did make the decision to remove McMillian and Huffman as trustees from the fund. I felt that Hackney and Bird were more qualified as trustees. I also removed Mike Pennington as a trustee of the fund. The removal occurred after that meeting, but I do not recall the date. McMillian was not removed from the trusteeship because of the issue he had raised regarding the FEC.

After the trustee meeting, I received a fax from McMillian dated April 26, 2005, in which he stated that due to personal matters he was not going to be performing his

business rep duties after 2 pm that day. I later discovered that he was performing bargaining unit work for a contractor which I am told that he did not receive pay for but there were members of the IUPAT out of work at that time who could have performed that work. McMillian and the contractor he performed the work for were both in violation of the contract and union constitution and bylaws. On May 11, 2005, I brought McMillian up on charges for violating his oath of office and the union's constitution regarding that incident. The contractor involved was audited by the International union.

I sent McMillian a letter dated May 2, 2005 directing him to meet with me on May 4 for the purpose of investigating his concerns regarding the FEC and anything else he wanted to discuss in an effort to settle his issues.

I met with McMillian at my office on May 4 at 11 am. Candelori was also present. During that meeting we discussed dues check-off for different contractors and how it applied. He also accused me of ordering reps to paint a political campaign sign during the election and contended that I broke the law. I denied that I ordered reps to paint those signs. McMillian talked about the FEC laws and that I had broken those laws. Candelori did not tell McMillian that DC-53 had not violated FEC laws. To my knowledge, the union never investigated the claims by McMillian that the union had engaged in political activities in violation of the FEC laws nor told McMillian that there was no violation of the FEC laws. He contended that someone at the district council had changed the bylaws of local 813 without his permission or knowledge and forged his name on the papers. Candelori told McMillian to bring the papers when he came to the May 5 staff meeting. McMillian said that he would do so. Candelori called Bird into the meeting and had him witness that McMillian was being given the local 813 bylaws, DC-53 bylaws, the international union constitution, and the working agreement of local 813, copies of the working and automobile policies and a reprimand letter that had been in his file. McMillian had previously made written request for those things. I had previously given those documents to McMillian. As a representative, he should have had a copy of most of those documents already. Candelori asked why he performed the work for a contractor on April 26, 2005. McMillian responded that he did not receive any money, that he was just doing that because he and the contractor were friends. He said that that was not the first time he had worked for a contractor under those circumstances. I asked McMillian if he had reported to the office of local 813 in Kenova that morning. McMillian responded that he had not because he was calling men out to work. He did not explain where he was calling from. He should have been at work before he came to the meeting. McMillian stated that he was seeking other employment at that time but he was not resigning his position as business representative right then. McMillian stated that I had removed him from trustee from the plan. There was a lengthy discussion about the health and welfare plan, but I do not recall the details. I do not recall what McMillian said about being removed from the trusteeship position. Candelori asked McMillian what he wanted. McMillian responded that if I would place him and C. E. Adkins back on the trusteeship of the fund and let them run it the way they wanted to do it, then all of his complaints regarding the FEC and NLRB unfair labor practice charges he had filed against me would go away. I told McMillian that I could not grant that deal and I did not agree what he said about painting the political signs. He did not respond. At that point, I

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gave McMillian his assignment to go to Martinsburg and Charles Town in Jefferson and Berkley counties to do organizing. McMillian responded that he hoped I was not doing that for duress or harassment. I do not recall what, if anything, I responded. The meeting ended at that point. It was about 2:30 pm. After the meeting McMillian stated to me that he could not go there with the tires that were on his car. I told him to go buy 4 tires. McMillian drove a car owned by DC-53 and it paid for tires, among other things. The meeting lasted about 4 hours.

I usually send all staff a fax regarding a staff meeting. I recall that Candelori asked me to fax McMillian to tell him to attend the regularly scheduled staff meeting on May 5, 2005 that Candelori was also attending.

On May 5, McMillian and Candelori met in my office prior to the beginning of the staff meeting. I was not involved in that meeting. They met over an hour. The staff meeting was held up waiting for McMillian to join us. The staff meeting began at 9:10 am. Candelori came in to the meeting around 10 am. McMillian finally came into the staff meeting at 10:40 am. He stated that he enjoyed working with us but he was handing in his resignation. He handed copies of the resignation to other staff members and read it. I responded that I accepted his resignation but I disagreed with the accusations that he had made. At that point, McMillian left.

I had no knowledge or belief that any of the representatives supported McMillian's position regarding any FEC violations.

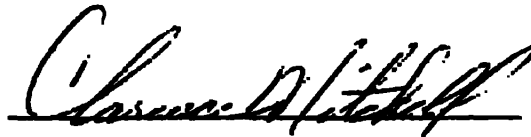
The District was formed over 3 years ago which resulted in bringing local 813, McMillian's local, among others, under its jurisdiction. Prior to that time, McMillian's territory was about 9 counties, which was about 2 hours drive from his home. The district covers a much larger territory than any one local covered before it became part of the district. The district was given the area in Berkley and Jefferson counties in the eastern panhandle around March 2005. Our responsibility was to go organize that area. In deciding who to send there, I was sending Huffman because he was the director of organizing. I was sending McMillian because he was assigned organizing duties about 6 months prior to the time he was assigned to that trip. There were organizers, Ted Hart in Steubenville, Ohio and Denver Abchit, in Marietta, Ohio who were geographically closer to the new area, but I sent McMillian because he had the experience and ability to do the job. He had worked with Huffman on a campaign in Athens, Ohio around late 2003. McMillian worked as a SALT on a job there and got information on an employer. We did not organize that employer but we stripped some of his men and they went to work for a union contractor. They were successful in that organizing effort. It should be noted that all of the organizers were going to go to the new area at some point. Our procedure is to send in a team of 2 organizers to get initial information. After that, we send in different groups to continue the organizing effort. Every organizer participates. If McMillian had not been the first to go he would have gone at some point. Also there is an effort not to send the same people to the same area all of the time so that they don't have to be away from home more than anyone else. It is true that the distance to the new area is greater than that traveled by McMillian before his local became a part of the

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district, but it is still an area he has responsibility for organizing as do the other organizers.

The organizing trip was canceled because of McMillian's resignation. I had to send someone to replace him at his local which consisted of about 120 members. There was also a strike in Athens, Ohio that we had to service. About 2 weeks later we sent our first team to the new area. Huffman and Dan Rowland from Marietta, Ohio went. Since that time I have sent several different organizers to that area. It is usually 2 organizers to open a new area. After that we send 4 organizers to go forth with the organizing.

I have read this statement consisting of 6 pages and it is true to the best of my knowledge and belief.



Subscribed and sworn to before me at Charleston, West Virginia

on December 8, 2005



Leroy G. Miller, Board Agent, National Labor Relations Board

C.E.M.

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